

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

INNOVATIVE SOLUTIONS  
INTERNATIONAL, INC., a Washington  
corporation,

Plaintiff,

v.

HOULIHAN TRADING CO., INC., a  
Florida corporation; and DOES 1–20,

Defendants.

Case No.

**COMPLAINT FOR BREACH OF  
CONTRACT, BREACH OF  
EXPRESS AND IMPLIED  
WARRANTIES, NEGLIGENT  
MISREPRESENTATION,  
NEGLIGENCE, AND VIOLATION  
OF WASHINGTON'S  
CONSUMER PROTECTION ACT**

**JURY TRIAL DEMAND**

1 Plaintiff Innovative Solutions International, Inc. (“Plaintiff” or “Innovative”), by and  
2 through their attorneys, K&L Gates LLP, allege the following against Defendant Houlihan Trading  
3 Company, Inc. (“Houlihan” or “Defendant”) and Doe Defendants 1–20:

#### 4 I. INTRODUCTION

5 1. This is a case about mislabeled and misrepresented chicken products—products  
6 that Defendant labeled and represented to be boneless, but in fact, contained excessive bones.  
7 Plaintiff Innovative is a Washington family-owned and operated company that produces over 30  
8 different poultry and meat products distributed nationwide. For approximately 15 years, Innovative  
9 produced and sold the widely popular Chile Lime Chicken Burger product exclusively to Trader  
10 Joe’s. As one would expect, these were boneless burgers, meaning that Innovative purchased  
11 boneless raw materials to create them.  
12

13 2. Between July and September of 2021, Innovative purchased and received chicken  
14 products from Houlihan, which Houlihan expressly represented were “boneless.” While Houlihan  
15 sold Innovative the products, Pilgrim’s Pride Corporation (“Pilgrim’s”) produced, prepared, and  
16 packaged the products at its own facilities, and a number of other companies in the supply chain  
17 purchased, sold, and controlled the chicken products prior to Houlihan’s possession. When  
18 Innovative received these products, it used them to produce its Chile Lime Chicken Burgers.  
19

20 3. In September 2021, Trader Joe’s began receiving reports from customers finding  
21 bones and bone fragments in the Chile Lime Chicken Burgers. After a series of testing and  
22 inspections, Innovative discovered that the chicken products it purchased from Houlihan that  
23 summer contained excessive bones. A recall followed shortly after the discovery, and in December  
24 2021, as a direct result of this adulterated product, Trade Joe’s terminated its business with  
25 Innovative and discontinued the Chile Lime Chicken Burgers.  
26



### III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because the controversy is between citizens of different states, and the amount in controversy exceeds \$75,000.

10. This Court has personal jurisdiction under RCW 4.28.180 and .185, RCW 19.86.160, and under Fed. R. Civ. P. 4.

11. This Court has personal jurisdiction over Houlihan because Innovative's claims arise directly out of the Defendant's contacts with the State of Washington. Defendant has engaged in substantial business activities in or directed at Washington and has purposefully availed itself of the privilege of doing business in this forum. For example, and without limitation, Houlihan regularly engaged in business with Innovative (a Washington corporation) and sold and delivered the mislabeled chicken product to Innovative in Washington. Likewise, the injury Plaintiff alleges in this Complaint transpired, in substantial part, in Washington.

12. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Innovative's claims occurred in this district, or in the alternative, venue is proper under § 1391(b)(3).

### III. STATEMENT OF FACTS

#### A. Innovative Produces a Popular Product Distributed Nationwide

##### 1. Innovative's Business Operations

13. In 1996, Frank Sorba founded Innovative Solutions International, Inc., which he owns to this day. Over the last 26 years, Innovative established itself as a well-respected company distributing various food products throughout the United States food industry.

1 14. Innovative produces high-quality, value-added chicken, beef, and pork products  
2 and distributes nationally to retailers such as Safeway/Albertsons, Kroger, Trader Joe's, Costco  
3 Wholesale, independent retailers, and wholesale distributors.

4 15. Innovative employs over 110 full-time employees and operates a state-of-the-art  
5 food processing facility in Kent, Washington, with over 60,000 feet of processing and warehouse  
6 space.

7  
8 16. Innovative operates under continuous inspections from the U.S. Department of  
9 Agriculture (USDA), the U.S. Food and Drug Administration (FDA), and the Washington State  
10 Department of Agriculture. Innovative has also implemented additional safeguards, including  
11 retaining NSF-Cook & Thurber, an independent third-party, to conduct annual food safety audits.  
12 The reasons for these and other safety measures are straightforward; consumer safety is of the  
13 utmost importance to Innovative, and it stakes its reputation on the quality and safety of its  
14 products.

15  
16 17. On a usual production day, Innovative produces over 20,000 individual stuffed  
17 chicken breasts or similar value-added beef or pork products, over 60,000 four-ounce chicken  
18 burgers, and over 6,000 pounds of marinades or sauces in its kettle room. Its facilities have the  
19 capacity to produce an additional 40,000 portions of ground formed pork, beef, or chicken products  
20 and uses in line nitrogen freezing tunnels and a large nitrogen spiral freezer.

21 **2. Innovative's Long-Standing Relationship and Business with Trader Joe's**

22 18. In 2007, Innovative developed the "Trader Joe's Chile Lime Chicken Burgers," a  
23 chicken burger it would sell exclusively to Trader Joe's. Until last year, Innovative produced and  
24 sold this product to Trader Joe's without any significant incidents, and the Chile Lime Chicken  
25 Burgers remained popular among Trader Joe's clientele.  
26

1 19. Innovative annually sold approximately 72,000 cases of the Chile Lime Chicken  
2 Burgers (*i.e.*, about 7,000,000 burgers) to Trader Joe's. In 2020, Innovative produced and sold just  
3 under 7,000,000 individual burgers to Trader Joe's. The following year, the burgers' popularity  
4 grew, and Innovative's sales from January 2021 to September 2021 were 13.4% higher than its  
5 2020 sales.

6 **3. Innovative Uses Raw Materials to Create Its Chile Lime Chicken Burger**

7  
8 20. To create the Chile Lime Chicken Burgers, Innovative purchases frozen boneless  
9 skinless chicken breast trim or pieces in bulk 40-pound cases and boneless skinless thigh meat in  
10 bulk 40-pound cases. Innovative then processes this material at 27 degrees Fahrenheit, which  
11 provides the chicken sufficient firmness to be formed into a burger patty.

12 21. Innovative uses specialized equipment to "flake" the frozen blocks of chicken  
13 breast and thigh meat. "Flaking" is an industry term used to describe shredding blocks of meat into  
14 small pieces, which will be processed and formed. An auger conveyor then transfers these pieces  
15 to a mixer grinder, where the breast and thigh meat pieces are combined and ground for the first  
16 time. These pieces are then directly transferred into a second mixer grinder. After the flavor  
17 ingredients are added, the product is remixed again and ground one more time. Innovative then  
18 takes these pieces to the forming machine where the four-ounce burgers are produced, stacked,  
19 and then frozen and packaged.

20  
21 22. While Innovative's process includes various systems and checks for bone  
22 fragments, the primary manner Innovative uses to ensure boneless chicken patties is to order only  
23 boneless chicken product for its Chile Lime Chicken Burgers and other burger products and  
24 depends on accurate product labeling and distribution. Innovative has employed this process for  
25 15 years.  
26

**B. The 2021 Shipments: Innovative Purchased a Product that Houlihan Represented to Be a Boneless Chicken Product**

**1. Innovative Purchased the Chicken Product from Houlihan**

23. Innovative and Houlihan have been doing business for at least eight years.

24. Between July and September of 2021, Innovative placed six purchase orders to Houlihan and received approximately 239,760 pounds of chicken product (collectively, the “2021 Shipments”). While Houlihan sold the products to Innovative, Pilgrim’s prepared and packaged the products at its own facilities. Then, after a series of transactions, including at least one purchase or sale from certain persons/entities in the supply chain, Innovative received the 2021 Shipments.

25. All of Innovative’s purchase orders to Houlihan and Houlihan’s invoices to Innovative state the product is to be “boneless” and “skinless.” Emails between the parties confirm this agreement. True and correct copies of the purchase orders, invoices, and certain relevant correspondence are attached hereto as “**Exhibit 1.**”

**2. Pilgrim’s and Others in the Supply Chain**

26. Pilgrim’s was the original producer, processor, and packager of the chicken products in the 2021 Shipments that Innovative used in its Chile Lime Chicken Burgers and other burger products.

27. On information and belief, the others in the supply chain had custody and control of the chicken products in the 2021 Shipments.

28. The 2021 Shipments were labeled, through varying language and numerical codes, to indicate that the chicken products were “boneless” by industry standard.

1 **C. Bones are discovered in Innovative's Chile Lime Chicken Burgers**

2 **1. Consumers Reported Bones in the Chile Lime Chicken Burgers**

3 29. In July and August of 2021, Innovative purchased the 2021 Shipment and used the  
4 products for its Chile Lime Chicken Burgers. After processing, Innovative prepared and shipped  
5 them to eight Trader Joe's distribution centers throughout the United States.

6 30. In mid-September 2021, Trader Joe's received its first incident report regarding  
7 bones in the Chile Lime Chicken Burgers. Trader Joe's then informed Innovative of the incident  
8 report. Innovative then began investigating the issue. As part of its investigation, Innovative  
9 confirmed it had ordered boneless product and reviewed all of its production reports associated  
10 with the 2021 Shipments. While the investigation was ongoing, Trader Joe's received more  
11 incident reports from customers who were finding bones and bone fragments in the Chile Lime  
12 Chicken Burgers.  
13

14 **2. Testing Confirmed Bones and Bone Fragments Were a Pervasive Issue in the**  
15 **2021 Shipments**

16 31. In early October, Innovative and Trader Joe's voluntarily placed all product on hold  
17 until they could understand the root of the problem. At that time, Trader Joe's instructed their  
18 stores to discard any product associated with the affected code dates from the 2021 Shipments.

19 32. On or about October 8, 2021, Innovative began inspecting the raw materials for the  
20 Chile Lime Chicken Burgers.  
21

22 33. On or about October 13, 2021, Innovative inspected its raw materials from  
23 Pilgrim's and was alarmed to find excessive and large bones in the Pilgrim's product it had  
24 purchased as "boneless" and "skinless."

25 34. Innovative was hopeful that the problem was isolated and that it could quickly  
26 resolve the issue. To X-ray and rework the burger products, Innovative hired FlexXray, based in



1 Arlington, Texas, which specializes in X-raying products of all varieties of food product that may  
 2 contain foreign matter. For this process, FlexXray received 505 cases of the Chile Lime Chicken  
 3 Burgers from a Trader Joe's distribution center. FlexXray's plan was to examine all 24 individual  
 4 boxes of chicken burgers from each case, X-ray each box, sort the bad product from good product,  
 5 repackage the good product, and discard the bad product.

6 35. On October 21, 2021, FlexXray completed its inspection with representatives of  
 7 Houlihan and Pilgrim's present. FlexXray examined 297 cases (*i.e.*, 7,128 boxes) of product and  
 8 determined that *all* of the boxes were contaminated with excessive bone fragments. Not one box  
 9 was safe for sale.  
 10

11 **D. Innovative Suffered Extensive Losses as a Result of the Mislabeled 2021 Shipments,**  
 12 **Including the Loss of Trader Joe's Business and Other Damages**

13 **1. The Adulterated Product is Useless**

14 36. Upon learning of the FlexXray results, Innovative immediately contacted Pilgrim's  
 15 to inform it that the Pilgrim's product was adulterated. After a series of additional communications,  
 16 Pilgrim's refused to accept responsibility.

17 37. Innovative is unable to use or salvage the product from the 2021 Shipments.  
 18 Innovative held 2,787 cases of the mislabeled Pilgrim's chicken product in its plant freezer from  
 19 September 2021 until January 2021 and then moved all but one of the cases to a separate cold  
 20 storage facility. Innovative currently has affected finished product on hold at its facility. The cost  
 21 associated with this product and the product recall exceeds \$500,000.  
 22

23 **2. The Adulterated Product caused Trader Joe's to Terminate its Relationship with**  
 24 **Innovative**

25 38. On October 18, 2021, pursuant to 9 C.F.R. § 418.2, Innovative filed a Notice of  
 26 Receipt of Adulterated or Misbranded Product with the USDA.

39. On November 10, 2021, the USDA issued a recall for approximately 97,887 pounds of raw ground chicken patty products that may be contaminated with extraneous materials, specifically pieces of bones. This required the return of any and all boneless chicken burgers derived from the 2021 Shipments, including the Chile Lime Chicken Burgers, as well as the Spinach Feta Chicken Sliders which Innovative sold to Kroger stores.

40. On or about December 7, 2021, the Trader Joe's Recall Committee—which considers necessary actions after a project recall—opted to discontinue the Chile Lime Chicken Burger product. Shortly thereafter, Trader Joe's notified Innovative that they would no longer sell this product in their stores.

41. The financial impact of Trader Joe's cancellation—a cancellation that Houlihan's mislabeling and/or supply of the product caused—is substantial. Over the last 10 years alone, Innovative sold Trader Joe's over a *half a million cases* (i.e., 48 million four-ounce burgers) of Chile Lime Chicken Burgers. As noted above, this trend was increasing recently, resulting in the sale of over 70,000 cases of Chile Lime Burgers in 2018, 2019, and 2020 (the last full calendar year of sales). In total, Innovative estimates its current and future financial losses associated with this product could exceed \$5 million.

#### IV. CAUSES OF ACTION

##### Count I – Breach of Contract

42. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the Complaint as though fully set forth herein.

43. Innovative has at all times performed all of its obligations under its agreement with Houlihan.

1 44. Houlihan breached its contract with Innovative by providing non-conforming  
2 chicken products. Specifically, Houlihan provided chicken products with numerous bones and  
3 excessive bone fragments when Innovative and Houlihan agreed that the product would be  
4 boneless.

5 45. Houlihan's breach was material and went to the essence of its contract with  
6 Innovative.

7 46. Innovative was damaged as a result of Houlihan's material breach of the contract  
8 in an amount to be proven at trial.  
9

10 **Count II – Breach of Express Warranty**

11 47. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the  
12 Complaint as though fully set forth herein.

13 48. Houlihan's expressly warranted that the chicken product would be boneless,  
14 through written and verbal representations such as labeling and other communications. Innovative  
15 relied on those warranties and representations. The warranties and representations were a basis for  
16 the bargain between the parties.  
17

18 49. Houlihan breached its express warranties and representations.

19 50. The breach of the express warranties and representations damaged Innovative in an  
20 amount to be proven at trial.

21 **Count III – Breach of Implied Warranty**

22 51. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the  
23 Complaint as though fully set forth herein.  
24

25 52. As a result of communications between the parties before the delivery of the  
26 chicken product to Innovative, Houlihan had reason to know the particular purpose for which the

1 chicken product was needed, *i.e.*, to produce boneless value-added chicken products that were safe  
2 for consumers. Defendant impliedly warranted the chicken product to be, in all respects, fit and  
3 proper for that purpose.

4 53. Innovative relied on Houlihan's skill or judgment to select, furnish, and label  
5 chicken product fit for the specified purpose.

6 54. Houlihan failed to deliver suitable chicken product, and the product they delivered  
7 was not fit for producing boneless value-added chicken products that were safe for consumers.  
8

9 55. The defective nature of the product and Defendant's breach of this implied warranty  
10 proximately caused damage to Innovative in an amount to be proven at trial.

11 **Count IV – Negligent Misrepresentation**

12 56. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the  
13 Complaint as though fully set forth herein.

14 57. Houlihan labeled, marketed, and represented the chicken product in the 2021  
15 Shipments as a boneless product. In doing so, Defendant misrepresented existing material facts.  
16

17 58. Innovative relied on Defendant's misrepresentations in making its decision to go  
18 forward with the purchase of the chicken product.

19 59. Innovative was damaged by Defendant's misrepresentations.

20 **Count V – Negligence**

21 60. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the  
22 Complaint as though fully set forth herein.

23 61. Houlihan, a poultry distributor, had a duty of care to its buyers, such as Innovative,  
24 including but not limited to a duty to exercise reasonable care in selling and marketing products  
25 that were correctly labeled, fit for human consumption, and obtained from reliable sellers.  
26

62. A reasonably prudent distributor would have inspected its products, ensured that they were correctly labeled, and purchased them from reputable and reliable sellers who would do the same. Houlihan breached its duty to Innovative by selling and delivering excessively boned chicken product that was mislabeled and not fit for human consumption.

63. A reasonably prudent distributor could reasonably foresee that products without proper inspection or that were mislabeled would be unsafe for consumption. Houlihan's failure to properly inspect the product and ensure proper labeling proximately caused Innovative's damages in an amount to be proven at trial.

**Count VI – Violation of Washington's Consumer Protection Act**

64. Plaintiff realleges and incorporates by references to the foregoing paragraphs of the Complaint as though fully set forth herein.

65. Houlihan has engaged in unfair and deceptive acts or practices in the course of trade and commerce, which deceived or had the capacity to deceive a substantial portion of the public. Houlihan represented a product to be boneless when it contained numerous bones and excessive bone fragments.

66. The unfair or deceptive act or practice impacts the public interest because such act or practice is a health hazard to a wide range of consumers and puts consumer safety at risk. Specifically, Defendant's unfair or deceptive act or practice has the potential mislead the public and result in consumer injuries such as choking.

67. The unfair or deceptive act or practice has damaged Plaintiff in its business, trade, and property, causally arising from Houlihan's unfair or deceptive acts.

68. Defendant's acts and omissions are in violation of the Unfair Business Practices/Consumer Protection Act, RCW Chapter 19.86.

69. As a direct and proximate result thereof, Defendant is liable to Plaintiff for treble damages, together with attorneys' fees and costs pursuant to RCW 19.86.090, all in an amount to be determined at trial.

**V. REQUEST FOR RELIEF**

Plaintiff respectfully asks this Court to grant the following relief:

A. Judgment in favor of Plaintiff for damages in an amount to be proven at trial, in an amount that exceeds \$5.5 million.

B. An award of attorneys' fees under any agreement, statute, or rule authorizing such an award.

C. For injunctive relief, requiring Houlihan not to market excessively boned chicken products as boneless and to accurately market and label its products.

D. Such other and further relief as this Court deems just and equitable.

DATED March 10, 2022.

K&L GATES LLP

By s/ Philip M. Guess

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